

DECISION

**NSUARB-PAP-10-01 & 02
2010 NSUARB 172**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF THE MOTOR VEHICLE TRANSPORT ACT, 1987

- and -

IN THE MATTER OF THE APPLICATIONS of ACCURATE INSTALLATIONS INC. o/a All LIMOUSINE for the issue of Motor Carrier and Extra-Provincial Operating Licenses under the provisions of the said *Acts*

BEFORE: Dawna J. Ring, Q.C., Member

APPLICANT: **ACCURATE INSTALLATIONS INC. o/a All LIMOUSINE**
Chris Jacks

OBJECTORS: **ELIAS KIFLE o/a TOWN LIMOUSINE**
Elias Kifle

THARIQ ALI o/a PRESTIGE LIMO & TAXI SERVICE
Thariq Ali

ULTRA LIMOUSINE HALIFAX
Huynh Lam

HEARING DATE: April 26, 2010

**FINAL INFORMATION
DATE:**

May 6, 2010

DECISION DATE: September 3, 2010

DECISION: **Applications denied.**

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I INTRODUCTION

[1] Accurate Installations Inc. operating as All Limousine (“Accurate”) applied to the Board on February 3, 2010, for Motor Carrier and Extra-Provincial Licenses to provide unrestricted charter services anywhere in or outside of Nova Scotia.

[2] The Motor Carrier application reads:

SERVICE:

SPECIALITY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE:

The transportation of any individual or organized group from any point in the Province of Nova Scotia to any point in Nova Scotia one way or the reverse thereof.

VEHICLES:

One - Fourteen (14) passenger, Ford Expedition Stretch Limousine

RATES, TOLLS AND CHARGES:

Three (3) Hour Wedding/Prom Package \$1050.00 - \$200.00 Hourly Rate after three (3) hours

Daily Rate \$2000.00 based on a (10) ten Hour Day - client is responsible for overnight meals & accommodations for driver

January 2 - April 30 - Hourly Rate \$250.00 - Excluding Wedding/Prom Packages

May 1 - January 1

Rate - \$350.00 per Hour for Peak Hours Thursday/Friday/Saturday - excluding Wedding/Prom Packages

Rate - \$250.00 per Hour for Off Peak Hours Sunday/Monday/Tuesday/Wednesday - excluding Wedding/Prom Packages

Airport Transfers \$300.00

Military & Seniors Discount 10%

[3] The Extra Provincial application reads:

SERVICE:

SPECIALITY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE:

The transportation of any individual or organized group from any point in the Province of Nova Scotia to any point in or outside of the Province of Nova Scotia one way or the reverse thereof.

VEHICLES:

One - Fourteen (14) passenger, Ford Expedition Stretch Limousine

RATES, TOLLS AND CHARGES:

Daily Rate - \$2000.00 based on a ten (10) Hour Day
Clients are responsible for overnight expenses of the driver

[4] Notices of the Applications were publicized in the Royal Gazette on February 10 and 17, 2010. Three letters of opposition were received from existing licensed carriers providing limousine services being Elias Kifle o/a Town Limousine ("Town Limousine"); Thariq Ali o/a Prestige Limousine ("Prestige Limousine"); and Jonathan Lam, Operations Manager of Sam Lam o/a Ultra Limousine Halifax ("Ultra Limousine").

[5] A public hearing was held on Monday, April 26, 2010. Clarifications were subsequently received, and the last information to the Board was provided on May 6, 2010.

II LAW

[6] The applications were made pursuant to the *Motor Carrier Act*, R.S.N.S. 1989, c. 292 (the "*MC Act*") and the *Motor Vehicle Transport Act*, 1987, R.S.C. 1985, c. 29 (3rd Supp.), ("*MVT Act*"). Pursuant to s. 5 and 6 of the *MVT Act*, the Board is to administer extra provincial licenses under the same regulatory regime and administration as is

provided for in the province. Consequently, in Nova Scotia both license applications are to be determined by the requirements of the *MC Act*.

[7] The *MC Act* regulates operators in Nova Scotia to ensure there is a quality, safe motor carrier industry in the province. The following overview of the legislation is provided in the *Mac Tours Inc.* decision, 2008 NSUARB 100:

[69] On reading the *MC Act* as a whole, the object of the legislation is to ensure there is quality, safe motor coach transportation services available in the Province. To accomplish this, the *MC Act* requires the Board to regulate every aspect of the industry from routes and vehicle inspection to rates. The sustainability of this service for the public is the legislation's overriding directive. In balancing competing interest, the Board must do what is in the best interest of the public, giving specific consideration to the line run services, s.13(ca).

[70] The Interpretation Act requires the Board to consider amongst other issues, the necessity for the legislation (s. 9(5)(a)) and the consequences of a particular interpretation s. 9(5)(f). Factors affecting the necessity for the legislation include that Nova Scotia is not southern Ontario or Quebec. The Province has a very small population. Its demand for motor coach services is far less than the demand experienced in the Toronto/Montreal corridor.

[71] Another factor is that the costs of investing in this industry are large. In the *Trius* 2003 decision, the Board states as follows in para.62:

[62] Buying, operating, and properly maintaining motor coaches, especially larger ones, is an expensive business for all the operators which are parties to this hearing. New coaches with video, washroom, and air conditioning, regarded as the most desirable of all, have purchase prices in excess of half a million dollars. To ensure a ready supply of relatively new, large coaches, SMT/Nova has bought several such vehicles per year over the last four years. Moreover, other companies currently operating in the low season such as Nova, or Cabana, as well as DRL, have significant investments not just in coaches (especially newer ones), but in other ancillary assets. These exist to service and support the actual buses, such as storage garages, maintenance facilities, and administrative offices, with *Trius* itself leasing new premises in Halifax in the spring of 2002. Such assets exist year round, and are expensive to lease, purchase, or maintain.

Considering this large capital investment, it is not financially prudent for people to make an investment if they cease operating within six months. In a small demand area, if companies are out of business in six months, people and corporations eventually stop investing in buses and coaches. Transportation services may then be lost to the public unless supported by government subsidization, community groups, etc.

[72] Another important factor is the various services provided to the public. Regular route public passenger services, commonly known as "line run", provide essential transportation services to students, the elderly, the infirm, and those on fixed incomes who do not have

access to independent transportation. This service transports people for many reasons including medical appointments, school, work, adult challenged employment facilities, and visiting family and friends, King's Transit Authority, 2005 NSUARB 129, para. 15; and Need-A-Lift Transportation Services, 2006 NSUARB 27, para. 26-41.

[73] The industry also provides transportation services to the tourism industry in Nova Scotia which is very important for the Province's economy.

[8] When determining an application, the Board considers s. 13 of the *MC Act*,

which reads as follows:

Factors Considered

13 Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

[9] Section 13(a) speaks to there being an "excess of requirements" if the licenses were issued. Stated in the reverse, the question is whether there is a need for the services sought. It is this phrase which is often referenced in the Board's decisions. Both phrases refer to the same issue.

[10] The Board also has the power and authority to fix the rates charged by the motor carrier pursuant to s. 27(1)(c) which states:

27 (1) The Board has power and authority to

...

(c) fix the rates, fares or charges or the maximum and minimum or maximum or minimum rates, fares or charges that a motor carrier is authorized to charge for the transportation of passengers, baggage and parcel express and the schedules and service that a motor carrier must observe and provide;

[11] Under the *MC Act* the Board has the same powers, procedures, constitution and practices it has under the *Public Utilities Act*, R.S.N.S. 1989, c. 380, as amended, provided the provisions are not in conflict with the *MC Act*.

[12] Accurate has the burden of proof to show, on a balance of probabilities, that the Board should grant the licenses after considering s. 13 of the *MC Act*.

III AMENDMENTS AND CLARIFICATIONS

(A) Rates

[13] In its Application, Accurate sought to provide a rate for weddings and proms at anytime during the year at a minimum price of \$1,050, and \$200 per hour for every hour after three hours. A person wishing to rent the limousine for any other type of celebration would be able to do so for one hour at the regular rates for the limousine which would vary during peak season and peak days during the week, ranging from \$250 to \$350 per hour.

[14] Mr. Jacks stated the reason for the three hour minimum for proms and weddings is that in the latter the carrier would decorate the vehicle, put in red carpet, and provide champagne in crystal glasses. A group of people going to their prom must pay \$1,050. When asked by the Board, Mr. Jacks stated a person celebrating a 30th birthday party is able to rent the vehicle for one hour. He confirmed a person going to their prom is not permitted to rent the vehicle for one hour to take them from a restaurant to the

graduation dance. Nor is a wedding party able to rent it for an hour to go from the church to the reception.

[15] Under s. 27(1)(c) of the *MC Act*, the Board has the power and authority to fix rates and fares for all motor carriers. In s. 13 the Board is not given a limited list of factors it can take into consideration. The Board may consider anything in the public interest (s. 13(b)) and also any other matter which the Board considers relevant (s. 13(d)). Included in its consideration of the public interest is the Board's authority to set just and fair rates.

[16] In addition the Board's constitution, powers, procedures and practices under the *Public Utilities Act* apply, unless they are inconsistent with the *MC Act*, s. 30. In *New Glasgow Express Ltd. v. Board of Commissioners of Public Utilities* (1980), 44 N.S.R. (2d) 253, 115 D.L.R. (3d) 763 ("*New Glasgow Express*"), at paragraph 12, the Court of Appeal considered which sections of the *Public Utilities Act* applied to the Board when it is regulating bus companies under the *MC Act* and included most of the provisions used for setting rates for public utilities.

[17] Although the Board has the power to use these sections of the *Public Utilities Act* in setting rates for motor carriers, it is not bound to do so. Historically, the Board has only utilized those sections of a general nature such as providing just and non-discriminatory rates, outlined in s. 44 and s. 19. Sections 44 and 19 of the *Public Utilities Act* read as follows:

44 The Board may make from time to time such orders as it deems just in respect to the tolls, rates and charges to be paid to any public utility for services rendered or facilities provided, and amend or rescind such orders or make new orders in substitution therefor.

19 Whenever the Board believes that any rate or charge is unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any

matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice.

[18] In setting just and fair rates the Board will ensure each member of the public is entitled to the same rates for the same use of the vehicle. If persons want a number of their friends to join them for an hour for their 30th birthday, then they should also be entitled to have the opportunity to have the bus rented for only one hour to take them from their wedding ceremony to the reception or from a party to their prom. Each person seeks the service of the vehicle for one hour; the nature of their celebration is irrelevant. The Board further finds that forcing those celebrating their graduations and weddings to a package which is equivalent to a three hour peak day hourly rate, is unreasonable and discriminatory.

[19] If it is important to the carrier that there be a minimum three hour rental for one celebration, then there must be a minimum three hour rental for all celebrations. Otherwise the rates are unjust.

[20] The requirement for just and fair rates does not prevent the use of discounts for various groups such as seniors or those on fixed incomes, which the Board has historically permitted. These discounts are not based upon the use of the vehicle, but rather upon social policy. A more detailed explanation of the authority for this is noted in the Board's decision *Kings Transit*, 2008 NSUARB 125.

[21] At the hearing, the Board summarily advised Mr. Jacks of the above, that is the Board is responsible for determining the just and fair rates charged for services, making

a distinction between the reasons for the celebration is unfair, and either everyone is charged a three hour minimum or no one is charged a three hour minimum.

[22] Mr. Jacks explained that he did not wish to have a three hour minimum because he believed it would negatively impact his business.

[23] The Board gave Mr. Jacks an opportunity to provide to the Board, after the hearing, a new rate structure which treated customers the same. The Board also advised Mr. Jacks the rates may include additional charges to customers wanting the extra amenities such as decorations and red carpets.

[24] After the hearing Accurate requested to amend its rates as follows:

- May 1 - Jan 1
- \$350/hour with \$200/hour after three (3) hours
- Jan 2 - April 30
- \$250/hour with \$200/hour after three (3) hours
- \$2000.00 for ten hour day
- Airport Transfers \$300.00
- Military & Seniors Discount 10%

[25] The Board also directed the Motor Carrier Division to review other Motor Carrier Licenses to determine if others were charging higher rates for certain types of celebrations, such as weddings and proms, than they charge for renting the vehicle for any other function.

(B) Extra-Provincial

[26] The Board notes that in Accurate's Extra-Provincial Application it requests transportation to any point "in/or outside of Nova Scotia". Any transportation from a point within the province to any point in the province falls under the jurisdiction of the *MC Act*,

not the *MVT Act*. Consequently, the words “in/or” shall be removed from the License Application such that it will read “to any point outside of Nova Scotia one way or the reverse thereof”.

(C) Drinks Served

[27] When questioned about wedding rates, Mr. Jacks advised that they would decorate the limousine, use the red carpet, and provide crystal glasses and champagne. Although the Board is aware that limousine operators in some provinces are permitted to allow their passengers to drink alcohol, the *Liquor Control Act*, R.S.N.S. 1989, c. 260, as amended, prohibits it in Nova Scotia.

[28] After the hearing the Board requested Mr. Jacks to advise under what authority, if any, Accurate would be providing liquor to its customers? On May 6, 2010, Accurate advised that it would be serving non-alcohol cider champagne. Specifically, the question and answer were as follows:

Q. Please advise the Board under what, if any, authority you are permitted to serve champagne to customers while in your vehicle?

A. We provide sparkling [champagne] cider[.] I hope this clears up things.

IV ISSUE

[29] After taking into consideration s. 13 of the *MC Act*, should the Board exercise its discretion and grant permanent licenses to Accurate?

V EVIDENCE

(A) Accurate

[30] The following documents were filed by Accurate:

1. Certificate of Incorporation under the laws of the Province of Nova Scotia dated May 9, 2006. (The Application discloses its two shareholders are Christopher David Jacks and Sharon Rose Urbenz Jacks);
2. Certificate of Name Registration;
3. Power of Attorney from MacPhee to Accurate, as the lessee;
4. Certificate of Registration of a Vehicle for MacPhee Pontiac Buick GMC Ltd. ("MacPhee") for a 2007 Ford Expedition;
5. Certificate of Insurance;
6. Unaudited Financial Statements of Accurate for the year ending April 30, 2009, filed confidentially, which shows 2008 and 2009 comparison; and
7. Exterior and interior photographs, the former showing an exterior white body black top limousine.

[31] Mr. Jacks began his testimony by stating this is not his full-time work. Approximately two years ago he looked into operating a 14 passenger limousine to work in conjunction with Hotshots Limousines and Tours Limited ("Hotshots"), which operates six and eight passenger limousines. Mr. Jacks advised that he did a lot of research in the Halifax Regional Municipality ("City" or "Halifax") and chose a vehicle that he thought was special and unique, being the newest and most state of the art for the City. He decided to do it as a tuxedo style with a white bottom and black top. The vehicle is leased from MacPhee Pontiac. He asserts there is nothing else like it in Nova Scotia or Atlantic Canada.

[32] He testified that although there are many six to eight passenger limousines, there are only two other 14 passenger limousines in the City. Ultra Limousine, which operates the other two 14 passenger vehicles, did not attend at the hearing but had forwarded to the Board a letter of objection. In Mr. Jacks' opinion, the province could use many more. He stated there is a void between the eight passenger limousine and the limousine buses operated by the two Objectors present at the hearing, Town Limousine and Prestige Limousine.

[33] Mr. Jacks stated there are a number of groups that are larger than eight passengers and do not want to travel on a bus style limousine. He does not consider the six to eight passenger vehicles to be the same as a 14 passenger vehicle and they do not attract the same clientele. Similarly, he says the limousine buses operated by two of the Objectors are also very different from a 14 passenger limousine and, therefore, they are not offering the same service that he seeks to provide.

[34] Mr. Jacks testified Accurate will be receiving all of its bookings from Hotshots, which has a very large clientele. Accurate will be using Hotshots logos on the vehicle. Hotshots will be the company doing all of the advertising in the City, including advertising on Q104 and Z103.5.

[35] Mr. Jacks sees Halifax growing as a metropolis that has major events coming in the future such as the Canada Games and notes that tourism will increase and

decrease at various times. Mr. Jacks currently has sufficient bookings already this year to completely pay for the vehicle. Specifically, he stated as follows:

We have a large clientele that has backed us with our growth and are very satisfied with using us. I can go into who and how they are, who these clientele are, but I mean as a general statement, you know we are advertising with the Q104, Z103.5, 101.3, Mike Smead of Reflections, Peter Murphy, Murphy on the Waters. We currently do stuff...we have a car at Atlantica Hotel in Halifax, Carla Balsler from the Rodeo Lounge, Myrna Peachlie of Atlantic Wedding Showcases, we got grand reviews at that wedding show and she recommends us highly. Wayne Webber and staff of McPhee Pontiac, also some of the other limousine companies are recommending us for their work above the eight passenger vehicles. John French of Arrive in Style, Habib of Crystal Limousine and Peter of Signature Limousine. So we have paired up with some people in this part of the industry. In my feeling we could have a lot more of these vehicles in town. I know the opposition comes that the industry is hard and difficult and I understand that it is and my full-time job is not in the limousine business, but it is an opportunity that I see as an investment and a great business. It can be a thriving business. Our metropolis is growing every year. We have events coming in the future of the Canada Games and we have various tourism activity that goes up and down, but there is, in my opinion, in the bookings that I have to date, already make this financially viable for me.

Soundtrack from Hearing 8:10 to 10:10

[36] On cross-examination by the Objectors, in commenting on their decrease in limousine demand since 2008, Mr. Jacks reiterated that he is not in their business as they operate limousine buses.

[37] When asked about there not being much demand for luxury transportation apart from the wedding/prom season, in which an infinite number of vehicles could be used, again, Mr. Jacks spoke of providing a different service.

[38] He was asked: "Why was he not offering the same rates throughout the whole year, if there was so much business, rather than providing a lower rate from the period of January to April and Sunday to Wednesday?" Mr. Jacks stated the rates recognized the difference between the peak and non-peak times.

[39] A lot of questions were asked by the Objectors alleging improper use of the vehicles contrary to the *MC Act* and *Regulations*. Specifically, they asked Mr. Jacks about

using the vehicle for cash payments from customers on New Year's Eve and other dates. Mr. Jacks stated that he received the vehicle on December 22, 2009. He testified it was licensed on December 31, 2009. The Board notes, however, that the Certificate of Registration of a Vehicle was not issued until January 14, 2010. On New Year's Eve Mr. Jacks stated he drove his family around the City, but accepted no cash payments. He has driven the vehicle extensively around the City to provide exposure for it, but he has not used it improperly and has not driven customers prior to having his temporary authority. John Smaggus of Hotshots also had access to the vehicle. Mr. Jacks stated Mr. Smaggus would not use the vehicle improperly and would not take bookings or receive cash payments prior to it being operated under a temporary authority.

[40] Accurate began operating its vehicle under a temporary authority issued by the Board on February 8, 2010, which was subsequently reviewed.

[41] Mr. Smaggus of Hotshots testified on behalf of Accurate by telephone conferencing. He supports this Application one hundred percent. Mr. Smaggus testified he wants to provide luxurious transportation and that he is not in the bus business.

[42] In June 2008, Mr. Smaggus began to operate his limousine business and purchased a six passenger limousine. By November 2008, he purchased an eight passenger. As public passenger vehicles with a seating capacity under nine passengers are not regulated by the Board, Hotshots is not a licensed carrier.

[43] Mr. Smaggus has found that there are larger parties that his vehicles cannot accommodate. For example, wedding parties; there will be a bride plus four and a groom plus four. If he could invest in a 14 passenger vehicle at this time and do it all on his own

he would have. However, it is a matter of finances. He has been putting his money back into his cars and fixing them up in his auto-body shop in Burnside. This led to his relationship with Mr. Jacks who was interested in purchasing a larger limousine to accommodate these larger groups. Mr. Smaggus testified not everyone is interested in being on a luxury bus.

[44] Hotshots has a variety of commercial accounts and Mr. Smaggus testified it has numerous bookings for the upcoming year. Their commercial accounts include the following:

... we got some great commercial accounts that use our service on a frequent basis. We got Reflections, we got Rodeo Lounge, Q104 use our service, 103 Graham Estabrooks, there is lots of business...

... I am answering 30 to 50 emails a week. The wedding packages...the wedding parties always seem to be larger than eight people, it is usually like a bride and four and a groom and four, so all of a sudden you are into 10 passengers. I mean you see how many deposits we have already and we've got deposits from New Brunswick because there is nothing like that available in Atlantic Canada, buddy that booked in New Brunswick in Miramachi said the nearest thing he could find was in Montreal. You know we are not running a bus, we are running, you know, a luxurious limousine, you know, not everybody wants like a party bus per say. You know what people want a stretched luxurious limousine. ...

Soundtrack from Hearing 3:40 to 5:00

He is answering between 30 to 50 emails per week. He has deposits from customers in New Brunswick who advised they would have to go to Quebec to get the kind of vehicle they wanted. He alleges Accurate's vehicle is the only one of its kind in Atlantic Canada.

[45] Mr. Smaggus denied operating the vehicle illegally, operating it when it was not authorized to do so, undercutting the competition, and/or taking cash.

(B) Opposition

1. Town Limousine

[46] Mr. Kifle is the owner and operator of Town Limousine. He testified that he has been in the limousine business for 21 years. In addition to stretch limousines, he is licensed by the Board to operate one 23 passenger limousine bus. In 2008, he purchased it for \$250,000. He stated there was nothing like it in the industry.

[47] Mr. Kifle testified that his main reason for opposing the application is that there is not enough business to support all of the luxury vehicles that are currently licensed in the area. Since the global recession began in 2008, there has been a decline in business. His accounts and contracts are down 20% from what they were before the recession began.

[48] If he thought there was sufficient business he would support the application as he has done in the past. Furthermore, if there was enough business, he would have bought a 14 passenger limousine. However, there is not enough business to support another vehicle in the luxury transportation business. He stated that one limousine operator, Leon Glasgow, has already gone out of business. The Board places no weight on this last statement as there may be various or other reasons for it not being successful and that evidence is not before the Board.

[49] Mr. Kifle testified to various examples of information he had received from people regarding the vehicle of Mr. Jacks being used for hire without being licensed by the Board or operating under a temporary authority; and later quoting prices contrary to the rates in its temporary authority. Numerous specific dates were addressed, including a

person who claims to have paid cash after hiring the vehicle on New Years Eve. Another example, was a person who called for rates and received a rate contrary to the temporary authority rates. Mr. Kifle advised that he made complaints to the Motor Carrier Division that Mr. Jacks was operating without and/or outside of his authority. On questions from the Board about the alleged improper operations of Accurate, Mr. Kifle stated he did not provide the names and telephone numbers of people who stated they paid money to Accurate for the services.

[50] When the Board asked Mr. Kifle why he did not oppose the other 14 passenger limousine application from VIP Limousine & Taxi Services, he stated that he was unaware of the Application. Had he known about it, he would have opposed it as well.

2. Ultra Limousine

[51] Jonathan Lam, the operations manager of Ultra Limousine, wrote a letter of objection to the Board, received on February 19, 2010, which reads as follows:

I am writing on behalf of Ultra Limousine of 348 Windmill Rd, Dartmouth, NS in opposition to the pending Motor Carrier License for Accurate Installations o/a All Limousine submitted by Chris Jacks Feb 10,210.

Our concerns stem from the fact that the Halifax Regional Municipality is too small a market to sustain another high occupancy limousine. With the vehicles and other carriers currently on the road we are already strained to make a living. To add another carrier on the road would seriously cripple our already lean business. It is our request that the Utility and Review Board deny Accurate Installations o/a All Limousine a carrier license for the 14 passenger Ford Expedition stretch limousine.

[52] Mr. Lam is also affiliated with another sole proprietorship, Capital Limousine. Capital Limousine has motor carrier and extra-provincial operating licenses issued by the Board to provide transportation of any person or organized groups anywhere in the

Province of Nova Scotia and from anywhere in the Province to any point in Canada and the United States, one way or return. Capital has three limousine vehicles on its motor carrier license and two on its extra-provincial license. Mr. Jacks described two of these as being similar seating capacity to his.

[53] Mr. Lam did not attend at the hearing.

3. Prestige Limousine

[54] Mr. Ali testified it cost him \$250,000 for an 18 seat limo bus. He wrote an objection letter to the Board which reads as follows:

I am writing on behalf of Prestige Limo, in opposition of granting this new vendor an operating license for such a vehicle because the market has taken a downward motion and business has declined greatly. In fact, I for this reason have abandoned my quest for this such vehicle for which I was granted the license. Now this may change for myself because of my established customer base but for now a new company should not be allowed to come into this market niche.

Furthermore, I still haven't heard from anyone why this vendor was given a temporary license whereas I was never given this option when I applied. I waited more than 3 months and lost must revenue as a result. This vendor should not have that luxury of making revenue at our expense knowing he/she has much opposition against them. Please consider my points and deny this vendor a license and revoke their temporary authority.

[55] Mr. Ali testified that Prestige Limousine's License was issued by the Board on December 5, 2008. Prestige Limousine is licensed to use a 10 passenger and 18 passenger vehicle.

[56] He stated that there has been a decline in the overall limousine service business in Halifax. A year ago he applied to the Board for an SUV type vehicle, similar to Mr. Jacks, because he saw demand for the vehicle in the industry. However, after being given the authority, he has seen such a decline in his business that he had to abandon

purchasing the vehicle. In future, he may reapply, but there will have to be an increase in the market.

[57] Mr. Ali argues Mr. Jacks has given no evidence from customers, not even supporting letters.

[58] Mr. Ali also complained that he was not offered a temporary license when he sought to enter the business. He waited three months for his hearing to occur. He claims to have lost a lot of revenue and thinks it is unfair that Mr. Jacks was provided with a temporary authority and he was not offered one. The Board addressed, at the hearing, that the request for a temporary authority is the responsibility of the Applicant not the Division. Everyone is deemed to know the law.

[59] Mr. Ali was also not aware of the application of VIP Limousine & Taxi Services which was unopposed before the Board. He spoke about the difficulties locating the notices in the Royal Gazette. He must go to the Royal Gazette at 10:00 a.m. to pick up a copy. To have a copy delivered to his business is expensive. All present spoke of ways to provide better notification of applications.

(C) Complaints

[60] Natalie Aisthorpe, Director of the Motor Carrier Division, gave evidence before the Board regarding the complaints raised by Mr. Kifle that Mr. Jacks' vehicle was operated contrary to the *MC Act* and *Regulations* prior to being issued a temporary authority. Ms. Aisthorpe stated that Inspector John Penney investigated the allegations and attended at the operations of Accurate. The inspector concluded there was no

evidence that the limousine had been operated contrary to the *MC Act and Regulations*. Furthermore, Mr. Jacks initiated the temporary authority request and applied for the permanent application.

[61] The Board addressed, at the hearing, that this is a regulated industry. The Board cannot regulate the industry without people providing the names and telephone numbers of the witnesses who are alleging that a carrier has acted improperly. Those witnesses need to be prepared to state to the Division the same information they have given to carriers. The Division will investigate every complaint. It is difficult for the Division to properly investigate complaints if full information is not provided.

VI FINDINGS

[62] Accurate has the burden of proving to the Board that it should grant the licenses after taking into consideration the provisions of s. 13.

[63] Accurate has requested motor carrier and extra-provincial operating licenses unrestricted in transporting people anywhere. Although the license does not seek to restrict it to limousine/luxury transportation, it is the only vehicle sought in the applications and the Board only heard evidence regarding limousine luxury transportation. Therefore, the Board's decision will only focus on that service.

[64] The Board cannot treat Accurate differently from others making applications to the Board because Accurate chose to obtain its vehicle without first having the licenses. That is, the Board cannot automatically grant the licenses because the vehicle is here and Accurate has already incurred the expenses of leasing it. Doing so would be contrary to

the objects of the *MC Act*. If that were the case, others wanting a license would merely purchase vehicles in advance to bypass the requirements of the *MC Act*. This was recently addressed by the Board in *Party Bus Atlantic Inc.*, 2010 NSUARB 167.

[65] Furthermore, Accurate's temporary authority does not provide it with any presumption that it will receive a permanent license. Section 9(2) of the *MC Act* reads as follows:

Effect of temporary authority

(2) A temporary authority granted under this Section authorizes the person to whom it is granted to provide the service specified in the authority for or within the time specified in the authority, not exceeding ninety days, but shall create no presumption that a corresponding permanent authority or license will be granted thereafter.

See *Party Bus Atlantic Inc.* decisions, the one above and 2010 NSUARB 169.

[66] Consequently, the Board must consider the evidence in this hearing as though Accurate did not have a vehicle and had not been operating under a temporary authority.

[67] Mr. Jacks argued that as Prestige Limousine and Town Limousine do not operate a 14 passenger vehicle the Board should reject their opposition to its applications. Mr. Jacks argued that carriers that do not have the same vehicle are not providing the same type of service he seeks to operate. For the reasons noted below, the Board finds that the service sought in the applications is luxury transportation. Both carriers provide that service to the Nova Scotian public through various vehicles, whether they are the same vehicle as Accurate or not. Therefore, the Board finds both carriers may oppose the applications and be heard by the Board before it decides the matters.

[68] The *MC Act* regulates the motor carrier industry in Nova Scotia to provide quality, safe transportation for the public. It recognizes the large investments made by licensed transportation companies. If there is an excess of facilities/equipment and those investing in vehicles do not survive, people may stop investing and Nova Scotia could lose some transportation services for its public.

[69] When motor coaches and vehicles used in the industry were first expanding to different styles of vehicles chartered by multi-tour companies, each unique vehicle category was considered a separate service. However, both the common law and the *Interpretation Act* of Nova Scotia, R.S.N.S., c. 235, s. 9(1) requires the Board to read the *MC Act* as a whole and to provide a broad and liberal interpretation to ensure its objects are attained, *R. v. Sharpe*, [2001] 1 S.C.R. 45; *United Taxi Driver's Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485; *Cohen v. Nova Scotia*, [2007] N.S.C.A., *Dell Holdings Limited v. Toronto Area Transit Operating Authority*, [1997] 1 S.C.R. 32, para. 21; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, (S.C.C.). The most relevant provisions of s. 9 of the *Interpretation Act* read as follows:

Interpretation of words and generally

9 (1) The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.

...

(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters

(a) the occasion and necessity for the enactment;

(b) the circumstances existing at the time it was passed;

- (c) the mischief to be remedied;
 - (d) the object to be attained;
 - (e) the former law, including other enactments upon the same or similar subjects;
 - (f) the consequences of a particular interpretation; and
 - (g) the history of legislation on the subject.
- ...

[Emphasis added]

[70] Amongst the various directives, the *Interpretation Act* requires the Board to interpret legislation as “always speaking”, meaning the objects of the *MC Act* must be met in today’s society. In 2010 the Board finds that the objects of the *MC Act* are not met when different vehicles are treated as different services.

[71] The *Interpretation Act* also requires the Board to consider the consequences of a particular interpretation to determine if it meets the objects of the legislation (s. 9(5)(f)). Today there are endless choices of different vehicle styles, types, and seating capacities. If each different vehicle were considered a different service the Board finds this would flood the province with “excess facilities/equipment”, even though all are providing luxury transportation services. This result is contrary to the objects of the *MC Act*. The Board finds the objects of the *MC Act* are met when services are determined by the type of transportation, which in this case, is luxury transportation. See also *Absolute Charter Inc.* 2010 NSUARB 171.

[72] The Board finds, having considered all of the evidence and the factors of s. 13 of *MC Act*, that Accurate has failed to prove that the public is not being adequately served by the carriers currently licensed to provide luxury transportation to the public.

[73] The Board states “adequately” because, during school graduations, no amount of limousine/luxury vehicles can meet the public’s demand. The Board acknowledges that there are extreme peaks in all types of services, but that investments in numerous vehicles could not be sustained as the vehicles would be under utilized during the remainder of the year.

[74] The service Accurate seeks to provide the public is luxury transportation. Luxury transportation services are presently available to the public of Nova Scotia through a variety of different types of vehicles operated by carriers licensed by the Board.

[75] The evidence before the Board was limited to the verbal evidence of Mr. Jacks and Mr. Smaggus of Hotshots, with whom he will be working. No customers gave evidence either orally or in writing.

[76] There was no evidence that the public is not adequately receiving luxury transportation services from those licensed in the province to provide those services. There is also no evidence that when a member of the public or a customer had a larger group that Mr. Smaggus was directing them to the licensed carriers and/or that the licensed carriers were unable to provide the luxury transportation services. This, of course, excludes the peak graduation season.

[77] The Board also finds that the evidence of responding to 50 emails is not proof of a need for further vehicles providing luxury transportation. It is not uncommon for people to contact many or all of the carriers to receive quotes. Requests for information and quotes is not evidence of actual need for services that cannot be adequately met by licensed carriers.

[78] Town Limousine and Prestige Limousine both testified to the investment they have made in luxury transportation vehicles. They both spoke of the difficulty the global recession has had on their businesses. Town Limousine's business is down 20%. Prestige Limousine was authorized by the Board to add a further 14 passenger vehicle when the industry was booming before the recession. Mr. Ali testified he had to abandon purchasing that vehicle because of the decline in business caused by the global recession. The Board finds there has been a decline in requests for luxury transportation services since the global recession.

VII CONCLUSION

[79] After considering all of the evidence, the Board finds that Accurate has failed to prove that the licensed carriers are not able to meet the needs of the public seeking luxury transportation. Further, the Board finds that, with the global recession, there has been a decline in luxury transportation needs, such that there is an excess of luxury transportation equipment currently licensed in Nova Scotia.

[80] The applications, therefore, are denied.

[81] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 3rd day of September, 2010.

Dawna J. Ring